THE HON'BLE SRI JUSTICE T.CH.SURYA RAO
AND
THE HON'BLE SRI JUSTICE G.CHANDRAIH

W.P.NO.7836 OF 2006

O R D E R (Per the Hon'ble Sri Justice T.Ch.Surya Rao)

In the instant writ petition, the petitioners seek to assail the judgment dated 17.1.2006 passed by the Learned Special Court under A. P. Land Grabbing (Prohibition) Act, Hyderabad in L.G.C.No.150/1998.

2. The writ petitioners are respondents 1 and 2 in the L.G.C.No.150/1998. The respondents 2 to 7 in the writ petition are the applicants who filed L.G.C.No.150/1998. Respondents 8 and 9 in the writ petition are respondents 3 and 4 in the L.G.C.No.150/1998.

3. Applicants filed the application mentioning *inter alia* that the land covered by the schedule appended to the application, belonged to late Syed Ahmed Hussain, late husband of the first applicant and father of applicants 2 to 6, a part of it having been purchased by him under registered sale deed 26th Behman 1342 Fasli and part of it having been assigned by Tahsildar and thus mutated in his name on 28.10.1954 and that late Syed Ahmed Hussain died in the year 1971 and that the first applicant constructed a house over the land in the year 1975 and that the Mandal Revenue Officer, Golconda filed O.P.No.460/1989 against the first applicant and another under the A. P. Land Grabbing (Prohibition) Act for their eviction, which eventually ended in dismissal and that the respondents after having created documents ingeniously so as to illegally grab the land, took forcibly possession of the land in the year 1998 and thus they were the land grabbers.

4. While denying all the averments made *inter alia* in the application,

the case of the respondents was that late Syed Ahmed Hussain gifted the property in favour of the 1st respondent orally, evidenced later by a memorandum of gift and under that oral gift, the 1st respondent was put in possession of the property and since then he has been enjoying the said property in his own way.

5. On the above pleadings, the learned Special Court framed following issues:

1. Whether the applicants are the owners of the application schedule property?
2. Whether the rival title set up by the respondents is true, valid and binding on the applicants?
3. Whether the respondents are land grabbers under the provisions of Act XII of 1982?
4. To what relief?

6. At the time of inquiry, two witnesses were examined on the side of the applicants and Exs.A-1 to A-18 were got marked. Four witnesses were examined on the side of the respondents and Exs.B-1 to B-49 were got marked. Appreciating the evidence adduced on either side, both oral and documentary, the learned Special Court was of the view that the applicants were the owners of the application schedule property and the respondents failed to prove the rival title set up by them in respect of the said property and that consequently they were the land grabbers.

7. Learned counsel for the petitioners represented that the learned Special Court committed serious error in having not considered the voluminous documentary evidence filed on the side of the respondents. It is the further contention of the leaned counsel that the applicants set up a specific case that the respondents forcibly took possession of the land in the year 1998, but contrary to the same, the evidence adduced on the side of the

respondents disclosed that the respondents have been in possession of the land in dispute from 1970 onwards and thus by suppressing the suits filed and by setting a wrong cause of action, the applicants filed the application and, therefore the same is liable to be dismissed.

8. Admittedly the land in dispute was the property of late Syed Ahmed Hussain, the husband of the first applicant. The respondents set up title to the property in themselves by means of a oral gift (Hiba) said to have been made by late Syed Ahmed Hussain. Gift is said to have been further evidenced by Ex.B-24 memorandum of gift. Thus the respondents have clearly sought to set up a title in themselves under a oral gift. Here is a case where in the counter filed by them *inter alia* although it had been pleaded about the oral gift, they did not choose to give the date, month and year on which the gift is said to have been made by late Syed Ahmed Hussain. For the first time during the course of evidence, Ex.B-24 memorandum containing the date, has been sought to be introduced. Till then, there has been any amount of silence about the original date of oral gift.

9. As could be seen from the evidence adduced on the side of the applicants, the State of A.P. represented by its Mandal Revenue Officer filed a land grabbing case against the first applicant and another in O.P.No.460/1989 in respect of the land in question, which eventually ended in dismissal. The Special Court in O.P.No.460/1989 held that the first applicant was the owner of the land, having succeeded to the same through her late husband Syed Ahmed Hussain, who was the assignee from the Government and consequently the pattadar thereof. It is an indication that the occupant of the said land by the time O.P.No.460/1989 came to be filed, was the first applicant and her children on the premise that she was the land grabber. The said O.P.No.460/1989 was filed by the State. The possession of

the first applicant over the land in dispute by 1989 could thus be seen from the entries in the revenue records and from the allegation that she was the land grabber by the State. No such application has ever been filed against respondents 1 and 2 or as a matter of fact had respondents 1 to 4 been really in possession from 1970 on wards, as claimed by them, their possession would have been obviously recorded in the necessary revenue records and land grabbing case would have been filed against them instead of the first applicant and another. Although voluminous documentary evidence has been adduced on the side of the respondents, all of them pertain to obviously the period subsequent to 1989, except Exs.B-18, 19, 20 and 24. Of them, Ex.B-18 is a land revenue receipt, Ex.B-19 is a demand notice and Ex.B-20 is a land revenue receipt. Ex.B-24 however is the memorandum of gift said to have been made by Syed Ahmed Hussain. This document has not been proved convincingly to the satisfaction of the court by examining any attesters thereof. The Special Court refused to place reliance upon this document. It is quite surprising that when there has been town survey number given to the land in dispute, survey no.61 alone has been shown in Exs.B-18, 19 and 20. The name of 1st respondent has been shown as Sivai Jama, meaning there by a person in occupation. It is quite surprising, when it was the case of the first applicant that by 1975 after the death of her husband she constructed the house over the land in dispute, which by then, was obviously assigned the town survey number, land revenue came to be collected in respect of the said land under Exs.B-18 and 20. Surprisingly for two years, land revenue was collected under Ex.B-18 for the years 1970 to 1972 and for 12 years land revenue was collected under Ex.B-20 for the years 1973 to 1985. That arouses any amount of suspension as to how and why land revenue was paid for twelve years under a single receipt. These facts, which clearly are innate and emerge out of the record, throw any amount of doubt on the

veracity of Exs.B-18 to 20. Ex.B-24 has been clearly held to be not proved. In that view of the matter, non-consideration of the other documents which are mostly in the shape of several proceedings before the civil courts initiated on and after the year 1996, is of no consequence.

10. Insofar as the merits of the case are concerned, when obviously the respondents admit that late Syed Ahmed Hussain was the owner of the land in dispute and he gifted the property by means of an oral gift, in the absence of any proof positive on the factum of gift, it goes without saying that the successors of late Syed Ahmed Hussan have been continuing to be the owners thereof. The crucial point on which the entire edifice of the case of the respondents stand, is the oral gift. As discussed herein above, no date, year and month of the said oral gift has been mentioned *inter alia* in the pleading. For the first time it has come to light only during the course of evidence before the Special Court. The gift, therefore, has not been convincingly proved to the satisfaction of the court. Even the possession followed up by the gift allegedly, has not been sought to be proved, except by making a stray attempt to file by means of show of evidence by filing Exs.B-18, 19 and 20. We have already discussed about the veracity of these three documents. The very fact that the land grabbing case has been filed by the State against the applicants is itself an indicia of the fact that they have been in possession since 1989, although the cause of action as shown in that application *inter alia* filed by the applicants is demonstrably shown to be false, yet it is of no consequence on the merits of the case of the applicants. It has been specifically pleaded that the respondents ingeniously created documents and evidence so as to clearly grab the land. In that view of the matter and as this court is not sitting in appeal over the judgment of the Special Court, which under the impugned judgment by assigning cogent and convincing reasons has reached the conclusion that the applicants therein

are the owners and the respondents therein failed to prove the rival title set up by them and are consequently the land grabbers, we see no compelling reasons to interfere with the said conclusions reached by the learned Special Court *inter alia* in the impugned judgment. For the above reasons, the writ petition must fail.

11. In the result, the writ petition is dismissed. No order as to costs.

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T.CH.SURYA RAO,J

G.CHANDRAIAH,J

AVS
DATE:20.07.2006